IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 521 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DILIPSINH RAMSWAROOPSINH

Appearance:

1. Criminal Appeal No. 521 of 1993

Mr M A Bukhari, APP for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/12/2001

ORAL JUDGEMENT

The State of Gujarat has preferred this appeal under section 378 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), challenging the judgment and

acquittal order dated 11.2.1993 recorded by the learned Judicial Magistrate First Class, Dehgam in Criminal Case No.470/91. The facts leading to this appeal may be briefly stated as follows:

2. That the present respondent was charge sheeted before the learned Judicial Magistrate First Class, Dehgam in Criminal Case No.470/91. The allegation against the present respondent was that one Shivsingh Makwana was working as Wireman in the employment of Gujarat Electricity Board at Dehgam and as such he was a public servant. That on 9.3.1991, he was attending to a line repairing work and, therefore, he was on duty as a public servant. On 9.3.1991, at about 15 hours, it is alleged that, the present respondent gave a slap on the face of the said person who was a public servant who was discharging his official duty as a public servant. It is also alleged that the present respondent also gave him absuses and also gave him threats and thereby the respondent committed offence publishable under sections 332, 504 and 506(2) of IPC.

3. On receipt of the FIR lodged by the Dy.Engineer, Gujarat Electricity Board at Dehgam, investigation was conducted. At the close of the investigation, charge sheet was filed on 8.4.1991 against the present respondent. The respondent was arrested on 4.3.1991 and he was sent to judicial custody. It seems that thereafter, the respondent came to be enlarged on bail. When the charge sheet was received in the court, the present respondent was supplied with copies of police investigation papers. Charge at Exh.4 was prepared and it was read over and explained to the present respondent on 15.11.1992. The respondent pleaded not guilty to the said charge and, therefore, the matter was kept for evidence. It seems that on 11.2.1993, the witnesses were not present for the prosecution. Therefore, the learned APP submitted an application on 11.2.1993 at Exh.16 stating that the original complainant had appeared in the court on the previous adjourned dates. That even Mr Shivsingh Makwana, the injured victim, also used to remain present in the past. That on 11.2.1993, the original complainant and the witnesses were not present and therefore, bailable warrant be issued against them and that adjournment may be granted in the interest of justice. We find a copy of the said application on the record and it has been found that the said application was dismissd by the learned Magistrate without assigning any reason. The learned Magistrate passed the order below the charge sheet itself on the same day i.e. on 11.2.1993 that sufficient opportunity was given to the

prosecution but the prosecution has failed to produce evidence before the court. That the case is very old and with a view to provide a fair trial to the respondent, evidence of the prosecution was ordered to be closed and the respondent was acquitted for want of any evidence on record. It is further directed that the muddamal be destroyed. Feeling aggrieved by the said judgment and acquittal order of the learned Magistrate, the State of Gujarat has preferred this appeal before this Court. It has mainly been contended that when the witnesses were present, they were not examined and when the witnesses were not present on 11.2.1992, the learned Magistrate did not grant any time but acquitted the respondent by closing the evidence of prosecution. That because of the said procedure followed by the learned Magistrate, serious prejudice has been caused to the prosecution. That therefore, the present appeal be allowed and the judgment and acquittal order passed by the learned Magistrate be quashed and set aside.

4. On receipt of the above appeal, leave was granted and the appeal was admitted on 28.9.1993. The matter was ordered to be expedited. Board shows that despite service of notice, the respondent has not appeared before this court.

5. I have heard Mr M A Bukhari, learned APP for the State. I have also gone through the papers of this appeal. In fact, the learned APP has also taken me through the records of the appeal. Now it is very clear that the present respondent was facing trial for offence punishable under section 332 of IPC along with other offences. The offence punishable under section 332 of IPC is of a serious nature. It is an offence under which an injury has been caused voluntarily to a public servant while on duty. When a public servant is discharging his duties and when some person causes injuries to him, then the offence is really of a serious nature and cannot be dealt with very lightly. Therefore, this aspect of the case is required to be considered by this Court. In fact, the learned Magistrate was required to consider the said aspect before passing one line order of acquittal on the charge sheet itself.

6. Another aspect of the case is that the learned APP appearing in the trial court had submitted an application exh.16 on 11.2.1993 to the learned Magistrate. There he made it clear that the original respondent as well as the injured both were used to remain present in the court in the past. It has also been contended by him in the said application that they

were not present in the court on 11.2.1993, and therefore, bailable warrant be issued and further prayed for adjourment of the case. The learned Magistrate has not dealt with the aforesaid factual aspect in his order. That means that factual aspects are not disputable. In that view of the matter, it is very clear that the witnesses used to remain present before the court and they were not examined. Reasons are not shown and it seems that the Court might not have time to examine them or that the party may have applied for adjournment. But the fact remains that the witnesses used to remain present and they have not been examined in the past. This aspect ought to have been considered by the learned Magistrate before closing the evidence of the prosecution. It seems that the learned Magistrate has passed the order rejecting the said application of the State Exh.16 on 11.2.1993 in one word (rejected) and dismissed the application. No reason has been given for dismissing the said application. It is not observed by the learned Magistrate that the application was factually wrong. The learned Magistrate has not observed as to the reason for not issuing bailable warrant against the witnesses who were absent on that date. No reason has been assigned for not granting adjournment for examination of the witnesses. The entire approach of the learned Magistrate appears to be not only wrongful but also illegal on the face of it.

7. It is well settled tht when the witnesses are present in the court, the courts are supposed to examine them. It is not open to the courts to grant adjournment even when such an adjournment is sought on the ground that there was some inconvenience to the defence Lawyer. For this purpose, it will be worthwhile to refer to a decision of Hon'ble the Supreme Court in the case of State of UP v Shambhunath Singh, reported in (2001) 4 SCC 667. There the Supreme Court has referred to the provisions made in section 309 of the Code and observed that the said provision is mandatory. That, the witnesses present in the court have to be examined except for the special reasons to be recorded in writing. It is further laid down that even inconvenience of Advocates is not a special reason for adjourning the case. It is, therefore, clear tht when the witnesses were present, the Court had to examine them. In the present case, the witnesses have remained present in the past and they did not or could not remain present on 11.2.1993. It is highly unfortunate that the evidence has been closed all of a sudden for non-appearance of the witnesses on a single occasion in the court, though they have appeared in the past. On the one hand, it is the duty of the

prosecution to keep the witnesses present, on the other hand, it is equally the duty of the court to see that the witnesses do remain present. For the said purpose, the Court has to issue summons and see that the summons reach in time. On the other hand, if the summons are served and despite that the witnesses do not remain present, then, it also becomes the duty on the part of the court to issue warrants for securing attendance of the witnesses in the court. In the present case bailable warrants were already applied for. Here the witnesses were present in the court in the past. Under the aforesaid set of facts, it is very clear that the learned Magistrate has committed serious illegality in acquitting the respondent for want of attendance of witnesses on a particular date, when it is a matter of record that the witnesses used to remain present time and again. On the contrary, application Exh.16 makes it clear that complainant as well as the injured public servant, both used to remain present in the past but the witnesses were not present on a particular date i.e. on 11.2.1993.

8. In above view of the matter, I am of the opinion that serious prejudice has been caused to the victim. It is more so, when the injured is a public servant and he was working as public servant in exercise of his official function. In the aforesaid set of facts, the learned Magistrate has committed serious illegality in closing the evidence and acquitting the present respondent. Under the aforesaid set of facts, the order of the learned Magistrate being illegal on the face of it, requires to be set aside and further opportunity is required to be afforded to the State for leading evidence before the trial court.

9. For the foregoing reasons, the order of the learned Magistrate is found to be illegal when simply a one line order on the charge sheet itself has been recorded by him, this appeal deserves to be allowed. Accordingly, this appeal is ordered to be allowed. The order of the learned Magistrate closing the evidence of prosecution and acquitting the respondent-accused from the offence punishable under sections 332, 504 and 506(2) of IPC is quashed and set aside. The case is remanded to the court of learned JMFC, Dehgam for trial and disposal according to law at its original number C.C.No.470/91. Since the case has become an old one, the learned Magistrate will naturally give due priority to the disposal of the said case.

18.12.2001 [D P Buch, J.]
msp